

AT A REGULAR MEETING OF THE CULPEPER COUNTY BOARD OF SUPERVISORS HELD IN THE BOARD ROOM, LOCATED AT 302 N. MAIN STREET, ON TUESDAY, MARCH 6, 2007.

**Board Members Present:** *John F. Coates, Chairman*  
*Steven E. Nixon, Vice-Chairman*  
Larry W. Aylor  
William C. Chase, Jr.  
Sue D. Hansohn  
Brad C. Rosenberger  
Steven L. Walker

**Staff Present:** Frank T. Bossio, County Administrator  
J. David Maddox, County Attorney  
John C. Egertson, Planning Director  
Sam McLearen, Zoning Administrator  
Peggy S. Crane, Deputy Clerk

**CALL TO ORDER**

Mr. Coates, Chairman, called the meeting to order at 7:00 pm.

**CITIZEN FORUM**

Mr. Coates opened the Citizen Forum and called for comments on any item that was not on the agenda.

Mr. D. R. Griffith, Stevensburg District, expressed his concern regarding the County's approval of the Bowen tract. He stated that a letter from the County Attorney dated February 13, 2007, regarding a request for information on the Bowen tract, stated that the Freedom of Information Act did not require a response. He said that the latest drawings did not indicate clean water and storm water protection or erosion and sediment control for the site. He pointed out that the VDOT review dated June 6, 2006 predated the traffic study by approximately a month, and the signatures of the Health Department and Soil and Water Conservation District dated January 31, 2006 predated the drawings by four months.

Mr. George Bryson, Jefferson District, informed the Board that he was filing a complaint regarding the tax assessment on his property that had more than doubled. He felt the County was favoring developers and big business, and it was not fair that the individuals who owned real estate had to bear the burden for rapid growth and the necessary infrastructure.

Mr. Steve Jenkins, East Fairfax District and Culpeper Town Council Member, stated he was not representing the Town Council, but was respectfully requesting the Board of

Supervisors to place on the November ballot the following question dealing specifically with illegal aliens in the community: "We the citizens of the County and Town of Culpeper expect our local governments to take actions possible and appropriate to deter and prevent illegal aliens from residing in our community." He said it was his belief, as well as others present, and those who had signed petitions, attended meetings, and wrote many letters to the editor of the *Star-Exponent*, that the national crises of illegal aliens was a local crises that could be addressed by a referendum. He said the outcome of the referendum would provide a clear action agenda for all present and future expectations of the citizens on the issue.

Ms. Donna Kemp, Locust Grove, spoke in support of Mr. Jenkins' request for a referendum. She asked the Board to put the question on the November ballot so that the voters could decide.

Ms. Alisha Payne, Locust Grove, spoke in support of placing a question on the November ballot regarding illegal aliens. She said she shopped and dined in Culpeper, and she urged the Board to support Mr. Jenkins' request.

Mr. William Platts, Stevensburg District, spoke in favor of a referendum on November ballot regarding the issue of illegal aliens. He did not believe that the illegal alien population was a financial benefit to the County and he urged the Board to address the issue.

With no further comments, Mr. Coates closed the Citizen Form.

#### **AGENDA ADDITIONS AND/OR DELETIONS**

Mr. Nixon moved, seconded by Mr. Aylor, to approve the agenda as presented.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

#### **PUBLIC HEARINGS(S) - NONE**

#### **UNFINISHED PLANNING COMMISSION BUSINESS**

**CASE NO. Z-414-06-1.** Request by Khurram Rashid to rezone 8.387 acres from R-1 (Residential) and C-2 (Commercial) to CS (Commercial Services). The Comprehensive Plan designates this area for Commercial use, but does not specify proposed density. The property is located on Route 3, Route 522 and Route 658 in the Stevensburg Magisterial District. Tax Map/Parcel Nos. 51/87, 87B1.

Mr. John C. Egertson, Planning Director, informed the Board that the applicant had withdrawn his request for rezoning, and no further action was required.

**NEW PLANNING COMMISSION BUSINESS**

**CASE NO. U-2117-06-1.** Request by Swan Family Properties, LLC, for approval of a use permit to allow a drive-through use associated with a pharmacy. The property is located on Route 15/29 Business and Route 694 in the Stevensburg Magisterial District. Tax Map/Parcel Nos. 41/72, 72B, 77A.

Mr. Sam McLearen, Zoning Administrator, informed the Board that the Planning Commission had considered the case and a public hearing was held. The Planning Commission found this application to be consistent with Article 17 of the Zoning Ordinance. He said the Planning Commission was recommending to the Board of Supervisors that the use permit be approved.

Mr. Egertson displayed a copy of the tax map that highlighted the location of the property on the existing Swan's Tractor Supply site at the corner of Ira Hoffman Lane and Route 15/29 Business. He said that Rite Aid Pharmacy was considering building a new store in front of the existing tractor supply business and that request would be subject to a future site plan. He presented a conceptual plan depicting how the store and access might be laid out. He stated that the pharmacy itself would not require a use permit, but the drive-through component did require a use permit. He said that staff had identified no concerns with the proposed drive-through, and it was being recommended for the Board's approval.

Mr. Coates asked for further information regarding the entrances on Route 15/29 Business. Mr. Egertson indicated a proposed entrance at the far left-hand side of the drawing at the identified crossover location, based on the plans for widening Route 15/29 Business, and a right-in, right-out access point between the crossover and Ira Hoffman Lane.

Mr. Walker asked whether the Entry Corridor Overlay District would be considered at site plan review. Mr. Egertson assured him that it would be subject to a Planning Commission review as well as an architectural review. Mr. Walker inquired about water and sewer. Mr. Egertson stated would be a site plan review issue as well.

Mr. Coates noted that the applicant was not present for the public hearing.

Mr. Coates opened the public hearing and called for public comments.

With no public comments, Mr. Coates closed the public hearing.

Mr. Coates asked whether the applicant had been notified. Mr. Egertson stated that the applicant had been notified and felt there must have been some miscommunication since representatives from Rite Aid and Bohler Engineering had been present at the Planning Commission hearing. He said he would be happy to answer any questions.

Mr. David Maddox, County Attorney, recalled that the rules of the Board were recently amended to state that if an applicant was not present at a hearing and the Board felt there was information they needed from the applicant, that absence would constitute an implied consent from the applicant to request the matter be tabled. He said if the Board felt it had sufficient information to make a decision, the case could proceed.

Mr. Chase stated he had supported the rule regarding an applicant's failure to appear, but in a case that would receive numerous reviews regarding site plan, water/sewer, access, etc., he felt there would be no problem in proceeding.

Mr. Chase moved, seconded by Mr. Walker, to approve the use permit to allow for a drive-through for the pharmacy.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

**CASE NO. Z-418-06-1.** Request by JKE Management, LLC, to rezone 8.9796 acres from RA (Rural Area) to HI (Heavy Industrial). The Comprehensive Plan designates this area as Commercial but does not indicate specific densities. The property is located on Route 15/29 Business in the Stevensburg Magisterial District. Tax Map/Parcel No. 42/12.

Mr. McLearn informed the Board that the Planning Commission had considered the case and a public hearing was held. The Planning Commission found this rezoning request to be in compliance with the 2005 Culpeper County Comprehensive Plan with the acceptance of a proffer statement, inclusive of changes discussed at the Planning Commission meeting. The Commission noted that this was an expansion of an existing business and support for the rezoning did not indicate general support for increasing the depth of commercial/industrial zoning along the 15/29 Business corridor. He said the Planning Commission was recommending to the Board of Supervisors that the rezoning be approved with the acceptance of the proffers.

Mr. Egertson displayed a copy of the tax map that highlighted the location of the property and its existing zoning. He explained that the entire parcel was currently split

zoned, with the back half being RA (Rural Area) and the front half M-2 (Heavy Industrial). He said the applicant had asked to increase the industrial zoning by adding approximately nine acres to the H-I (Industrial) zone that would attach to the rear of the existing industrial zoning, and leave more than 20 acres with the current RA (Rural Area) designation. He said the applicant had provided a concept plan and a set of proffers with the rezoning, but they had been slightly revised since the Planning Commission review based on discussions at the Planning Commission meeting. He explained that the nine acres would allow for increased bulk storage of mulch products at the back of the existing business, but storage of mulch in bags on pallets in front of the building would remain restricted to that use.

Mr. Egertson stated that the applicant had included proffers to not only address the nine-acre area, but the entire site by creating buffers on each side of the property line, and a 6-foot tall berm with a double row of 6-foot tall evergreen trees on that berm across the entire frontage of the property. He noted there was a wooded area at the back of the site that would remain RA (Rural Area) and the applicant had proffered to retain a 30-foot undisturbed buffer around that zoning as well. He pointed out that the berm in front of the property would be placed at a location beyond the future right-of-way line so that the area for the four-laning of 15/29 Business would be reserved by the applicant for that purpose. He said that staff was supportive of the request, and it was recommended for the Board's approval with the acceptance of the proffers.

Mr. Coates asked whether the applicant was willing to reserve the right-of-way on the side of the road to be widened. Mr. Egertson replied that the applicant had marked on the plat that entire right-of-way that would be needed and placed the berm and all business activities behind that line. He said the applicant had not offered the right-of-way for dedication for bank-lending reasons.

Mr. Coates asked whether the new street would align with the crossover. Mr. Egertson replied that the entrance was the one currently existing, and he did not know if that was a crossover location.

Mr. Butch Davies, attorney for the applicant, stated he would address the dedication of right-of-way. He explained that when the property was originally purchased, there were discussions with the owner about the potential dedication of the right-of-way, but the land was secured by deed of trust and the concurrence of the trust holder would be needed to transfer the land and that was not available. He said the parcel was reviewed by VDOT,

and VDOT thought that the best thing they could do was to acquire the reservation because it would mean no structures would be placed on it, and it was a recognition of the future use and provided that protection.

Mr. Davies stated that the applicant had recently cleaned up the property significantly and had proffered berms and protection on a parcel that was already zoned. He said a concern by an adjoining neighbor had been addressed by extending the berm along the M-2 zoning. He stated another concern that was raised at the Planning Commission meeting by an individual who was not an adjoining owner about the noise that would come from the grinder. He said that the grinder was currently located on M-2 land and was not going to be moved and the bulk storage would help deaden the sound.

Mr. Davies pointed out that the applicant had agreed to the 30-foot buffer around the entire boundary of his agricultural property and that buffer actually adjoined agricultural land, which was not expected or required by the code. He said that the applicant planned to use the balance of the agricultural land for agricultural purposes.

Mr. Coates opened the public hearing and called for public comments.

Mrs. Laura Rogers, Stevensburg District, stated she spoke at the Planning Commission meeting and requested that the berm be continued across the back of the whole H-I parcel, where trees were the only buffer. She felt that would decrease the noise from the grinder. She said the Planning Commission voted to approve the case without the berms since one of the stipulations for approval was that the trees would be preserved on the remaining 22 acres of RA (Rural Agriculture), and she wanted to be sure that stipulation remained in the revised proffers.

With no further comments, Mr. Coates closed the public hearing.

Mr. Chase stated that he visited the site and heard no negative comments from any of the neighbors. He said the site had already been improved, and he believed the applicant had a good plan with the proffers he had agreed upon.

Mr. Chase moved to approve with the rezoning request with the proffers stipulated by the Planning Commission. Mr. Aylor seconded the motion for discussion.

Mr. Egertson clarified that the proffers came from the applicant and were slightly different from what the Planning Commission considered regarding the trees there were being retained on the back 22 acres, on which the applicant was willing to retain 30 feet of trees on all three sides. He wanted to be sure the Board was voting on the current proffers.

Mr. Walker asked for an explanation as to why the berm could not be placed around the entire property. Mr. Egertson stated that the proffers included a 75-foot buffer and a landscape berm on each side within the area that was already zoned industrial and across the frontage. He said that Mrs. Rogers had asked for the berms across the back, but since the back already had a very thick tree line buffer on the parcel that was not being rezoned, it was deemed to be sufficient. He noted since the Planning Commission meeting, the applicant had indicated that he may like to create some pasture land on the agriculturally zoned area, so he has committed to saving a 30-foot buffer of existing trees around the entire perimeter of the site. He said, in addition, the newly rezoned area would contain piles of mulch that would effectively serve as a berm.

Mr. Walker asked whether the piece of property that was not being rezoned would still have 30-feet of tree line. Mr. Egertson replied that land would remain undisturbed.

Mr. Aylor asked Mrs. Rogers for clarification on her request.

Mrs. Rogers replied that she was asking for buffering to deaden the sound from the tub grinder, and she felt that a berm would be more effective than the trees.

Mr. Maddox recommended that the motion and second be amended to make it clear that the proffers currently before the Board were being approved, rather than the ones heard at the Planning Commission.

Mr. Chase stated that his motion was to approve the rezoning with the proffers presented and considered by the Board. Mr. Aylor supported the motion.

Mr. Aylor asked whether the hours of operation had been addressed. Mr. Egertson replied that they had not been proffered and the existing Heavy Industrial zone would continue to operate as it presently did.

Mr. Nixon asked whether a compromise could be reached with the applicant to consider a 50-foot tree line buffer around the property as opposed to 30 feet. Mr. Egertson replied that he made that suggestion after the Commission's meeting and asked that the question be directed to the applicant.

Mr. Davies stated that he had reviewed that question with his client, but what was being asked was to buffer the agriculture land that adjoined agriculture land. He said his client did not think the 30-foot buffer was needed because it was agriculture land, and he was not willing to expand that to 50 feet because he wanted to use the balance of the parcel for open pastureland.

Mr. Egertson reiterated that the applicant had agreed to buffer the acres that had nothing to do with the nine acres being rezoned. He felt the applicant had been fair in trying to address the entire site even though he was asking for rezoning on nine acres.

Mr. Coates expressed his concern that the hours of operation had not been addressed since the applicant could operate 24 hours a day.

Mr. Chase pointed out that the adjoining land was agricultural, and he did not believe the applicant would operate at night on the industrial property.

Mr. Coates asked whether there was residential zoning across the back. Mr. Egertson replied there were scattered houses, but he would not characterize the area as residential. He pointed out that the grinder was located in the front part of a very large parcel.

Mr. Coates asked whether Mrs. Rogers' property adjoined the property being retained for agricultural use. Mr. Egertson replied that Mrs. Rogers' property did not adjoin any of the property under consideration.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

**BEST BILT HOMES, LLC – 4 LOT SUBDIVISION.** Request by Best Bilt Homes, LLC, for approval of a 4-lot subdivision, excluding the residue. The property is located off Route 645 in the Cedar Mountain Magisterial District and contains 6.19 acres. Tax Map/Parcel No. 49/371.

Mr. McLearen informed the Board that the Planning Commission had considered the case and a public hearing was held. The Planning Commission found the application to be consistent with the Zoning and Subdivision Ordinances. He said the Planning Commission was recommending to the Board of Supervisors that this subdivision be approved.

Mr. Egertson displayed a copy of the tax map that highlighted the location of the property on Kirtley Trail. He said the applicant was proposing a subdivision of a lot on which there was currently a house. The subdivision would create a small cul-de-sac serving three lots, with a joint driveway serving the existing house and one additional lot off Kirtley Trail. There would be a total of five lots, one of which contained an existing home, and each lot had an onsite well and septic approved by the Health Department and the proposed cul-



de-sac and the joint driveway access had been approved by VDOT. He stated that the request was compliant with the existing R-1 zoning and was recommended for approval.

Mr. Robert Brown, applicant, was present to answer any questions.

Mr. Coates opened the public hearing and called for public comments.

With no comments, Mr. Coates closed the public hearing.

Mr. Aylor moved, seconded by Mr. Nixon, to approve the subdivision as recommended by the Planning Commission.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

**AMENDMENT TO THE SUBDIVISION ORDINANCE, APPENDIX B OF THE CULPEPER COUNTY CODE.** The Board of Supervisors will consider amendments to Section 613 of the Subdivision Ordinance, adding “spouse” to the list of persons qualifying as immediate family, and reducing the required width of access easements to family divisions from 50 feet to 20 feet.

Mr. McLearen informed the Board that the Planning Commission had considered the case and a public hearing was held. The Planning Commission found the proposed amendments to Section 613, Family Divisions of the Subdivision Ordinance, to be appropriate. He said the Planning Commission was recommending to the Board of Supervisors that the proposed amendment to the Subdivision Ordinance, Appendix B of the Culpeper County Code, be adopted.

Mr. Egertson stated that the proposed amendments to the Family Division section of the Subdivision Ordinance were considered by staff to be minor changes. He said the State Code indicated that “spouse” should be considered in family divisions, but the County Code had never included “spouse”. He believed that the County Code was restrictive enough in other ways to prevent abuses of that section. He said that staff was also proposing to change the width of right-of-way serving family divisions to 20 feet to parallel the State Code that indicated family divisions could be created on right-of-ways between 10 and 20 feet wide. The County Code specified a minimum of 50 feet. He said that staff was supporting the changes based on the State Code, and it was were ready for the Board’s consideration.

Mr. Coates opened the public hearing and called for public comments.

With no comments, Mr. Coates closed the public hearing.

Mr. Rosenberger stated that Mr. Donald B. Gore, VDOT Culpeper Residency Administration, was present and he would like to have his opinion on the proposed change in right-of-way.

Mr. Gore stated that he did not want to circumvent State law, but he had the responsibility to provide safe access to and from the highway and he did not believe a 20-foot easement was sufficient. He suggested that the safety issue could be addressed by having a 50x50 square from the right-of-way line for entrance improvements.

Mr. Coates asked about the origin of the proposed amendment. Mr. Egertson stated that it was generated by staff.

Mr. Rosenberger suggested that another way to address the issue was to consider the number of family members that may be living off of any individual driveway. He did not believe that a 50-foot right-of-way was necessary for family partitions, unless a large number of family members were involved.

Mr. Egertson stated that he felt the width of right-of-way could be addressed when the plat was approved because each plat required VDOT approval. He said the Board might prefer to act upon the "spouse" amendment and hold the right-of-way section until a later date or not at all.

Mr. Nixon suggested that a 25-foot right-of-way might be more acceptable because that would provide two traveling lanes of 12½ feet each and VDOT would still have input during the approval process. Mr. Gore did not feel that would be a big improvement. He expressed concern that the narrow right-of-way would cause accidents. He noted that three or more houses required a commercial-type entrance rather than one with two houses.

Mr. Chase did not believe there would be too many accidents on a 20-foot right-of-way where families shared a country road, but VDOT would still have a chance to change the width during the plat review.

Mrs. Hansohn pointed out that section 613.6 included the word "may" and would allow for a change to be made if there were a problem. Mr. Egertson agreed that was the way he interpreted it. Mr. Rosenberger stated that the wording would give VDOT the discretion to change the right-of-way.

Mr. Chase moved to approve the proposed amendments as recommended by the Planning Commission.

Mrs. Hansohn asked Mr. Egertson to read the ordinance language. Mr. Egertson

stated that basically all that was being changed were the words “50 feet” to “20 feet”. He said the section read: “Each and every lot created by such a division [referring here to family divisions] including any remaining land or remnant lots shall have perpetual ingress and egress to a dedicated recorded public street either being located on such street or by a recorded plat that irrevocable easement of at least 20 feet in width.”

Mrs. Hansohn seconded the motion.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

### **SIX-YEAR SECONDARY ROAD PLAN.**

Mr. Egertson informed the Board that the 2007 Six-Year Secondary Road Priority List and budget were the same as last year with no new projects being added. He said there had been slight revisions in the VDOT plan and budget. He reminded the Board that the Six-Year Plan was presented to the Board every year, but was considered by the Planning Commission only every other year. He said this was an off year, and the request was to adopt the plan and budget presented by VDOT.

Mr. Egertson stated that last year’s list had 21 projects, and only 14 of those appeared in the VDOT plan and budget because of funding constraints. He said that one project had been completed and removed from the top of the list, and 20 projects remained. He asked the Board to approve VDOT’s plan and budget that included 13 projects.

Mr. Coates opened the public hearing and called for public comments.

There were none, and Mr. Coates closed the public hearing.

Mrs. Hansohn thanked Mr. Gore for the lights at Catalpa. She said they were working well, and she appreciated his efforts. Mr. Gore explained that an extra light was installed because it would be needed for a future left turn that would be advertised for public hearing later this year.

Mr. Walker asked Mr. Gore if there were any construction problems in terms of easements that the Board could help him with. Mr. Gore replied that to his knowledge, every thing was going well. He said he would point out a recent change requiring VDOT to obligate a certain amount of funds to roads that qualify for Federal aid funding and Culpeper was fortunate that Route 620, the bridge at Kelly’s Ford, and Route 707 were already on the Six-Year Plan and Federal funds would be applied to those projects.

Mr. Coates noted that there were 12 projects on the VDOT plan and asked whether there would be any extra money for secondary roads. Mr. Gore replied that the County started with \$1.5 million in 2008 and the funds for 2013 were down to \$1 million, so he did not anticipate there being any additional money for roads.

Mr. Coates asked about the status of Route 644, Reva Road. Mr. Gore replied that right-of-way was now available and the project could move forward.

Mr. Nixon moved, seconded by Mr. Aylor, to approve the Six-Year Secondary Road Plan as presented.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

**ADJOURNMENT**

Mrs. Hansohn moved to adjourn at 8:20 p.m.

Peggy S. Crane, CMC  
Deputy Clerk

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John F. Coates, Chairman

ATTEST:

Frank T. Bossio,  
Clerk to the Board

APPROVED: April 3, 2007

